
YAKUT REPUBLICAN TRADE-UNION FEDERATION V. RUSSIA (APPLICATION NO. 29582/09)

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EUROPEAN COURT OF HUMAN RIGHTS

STRUCTURE

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YAKUT V. RUSSIA - FACTS

- Inmates work in a sawmill and in prison maintenance jobs.
- In February 2006, twenty inmates met in secret from the administration and voted to set up a trade union and have it join the Yakut Republican Trade-Union Federation. The federation admitted the union as its member.
- In April 2006, an amendment to the Public Associations Act 1995 introducing a restriction preventing convicts from being founders or members of public associations entered into force.
- In June 2007, the republican prosecutor's office investigated the union, found it unlawful and ordered the applicant to expel the union.



YAKUT V. RUSSIA – FACTS CONT'D

- The prosecutor's reasoning was twofold:
 - The Code on the Execution of Sentences saw prison work as a method of correction and not a professional activity, that in the eyes of the law inmates shared no industrial or trade interests, and
 - The amended Public Associations Act 1995 barred convicts from founding or joining associations.
- The federation initially refused to comply, citing the International Labour Organisation (ILO) Convention on the Freedom of Association and Protection of the Right to Organise 1948, Article 2 of which reads:
 - “Workers [...] without distinction whatsoever, shall have the right to establish and [...] to join organisations of their own choosing without previous authorisation.”
- In September 2008, the Yakutsk Town Court applied the restriction. In November 2008, the Supreme Court of Yakutia upheld that judgment and in December 2008 the applicant complied with the judgment and expelled the union from its ranks.



YAKUT V. RUSSIA - COMPLAINT

The applicant federation complained under Articles 6 and 11 of the European Convention on Human Rights (ECHR) about the statutory restriction on inmate unionisation. The complaint was examined only under Article 11, which reads:

- “1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”



YAKUT V. RUSSIA - MERITS

1. Was there a restriction of the rights guaranteed by Article 11?
 - Yes, the order to expel the TU from the federation counts as a restriction
2. Was the restriction prescribed by law?
 - Yes, by the amended Public Associations Act 1995
3. Did the restriction serve a legitimate aim?
 - Yes, the aim of preventing crime and disorder
4. Was it necessary in a democratic society?
 - Yes, because:
 - Prison work cannot be equated with employment. [Para. 44]
 - There is no sufficient consensus among contracting states to give Article 11 the interpretation advocated by the applicant. [Para. 46].
 - The Contracting State did not exceed the margin of appreciation available to the national authorities in this sphere. [Para. 47].



YAKUT V. RUSSIA – DISSENTING OPINION

The judgement raises a number of issues that are duly noted in the dissenting opinion of judges Lemmens and Serghides:

- Can the restriction of the right to form and join a trade union in this case be reasonably considered to have prevented crime and disorder at the prison in Yakutia?
 - No assessment conducted of the risks posed by trade-union activities in the relevant prison. [Para. 8].
- Prison work cannot be equated with employment – to what effect?
 - Lack of consensus at Contracting State level on the issue of allowing inmates to form trade unions is not a legal argument. Article 11 is reduced to a ‘sleeping beauty’. [Para.10].
- ‘Wide margin of appreciation not overstepped’ means a state can impose a total ban?
 - Permissible exceptions to the right to freedom of association must be narrowly interpreted (*Sidiropoulos and Others v. Greece*, no. 26695/95, § 38) as to give practical and effective protection to that freedom (*LO and Norwegian Transport Workers’ Union (NTF) v. Norway*, no. 45487/17, § 96, 10 June 2021). [Para. 5].
 - National law is incompatible with the ECHR? *Dura lex sed lex*. [Para. 10].



YAKUT V. RUSSIA – CONCLUDING REMARKS

Positive elements in the judgement [para. 45]:

- The Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see *Airey v. Ireland*, 9 October 1979, § 24, Series A no. 32).
- The Court reiterates that the Convention is a “living instrument” (see *Demir and Baykara*, cited above, § 146) and it may well be, therefore, that developments in that field may at some point in future necessitate the extension of the trade-union freedom to working inmates, especially if they work for a private employer (see *Stummer*, cited above, § 94).
- Paragraph 2 of Article 11 does not exclude any occupational group from the scope of that Article. At most the national authorities are entitled to impose “lawful restrictions” on certain of their employees in accordance with Article 11 § 2 (see *Sindicatul “Păstorul cel Bun”*, cited above, § 145).



YAKUT V. RUSSIA – CONCLUDING REMARKS

Domestic authorities enjoy a margin of appreciation with respect to the regulation of the exercise of trade-union freedom in prisons. They are entitled to restrict trade-union activities, provided that they can rely on relevant and sufficient reasons and that the restriction is not disproportionate. [Para. 11 dissenting opinion].

Over to you colleagues, for the arduous (?) sentence.

